IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 2908 OF 2007

Orient Longman Ltd. .... Petitioner

versus

Oriental Insurance Co. Ltd..... Respondent.

Mr. D.D. Madon with Kevic Setalvad i/b R.M. Jaykar with Ms. Dimple Mehta i/b M/s. Jayakars for petitioners
Mr. V.Y. Sanglikar for Respondent no.1.
Mr. M.S. Bhardwaj for Respondent no.4.
Mr. Sagar Talekar with Rui Rodriques for Respondent no.4.

CORAM; A.P. DESHPANDE, J.
DATED; 04TH AUGUST, 2007

P.C.;

1. A draft amendment application is placed on record and orally leave is sought to allow the proposed amendment. The learned counsel for the respondent has no objection to allow the amendment. Hence amendment is allowed.

2. By the present amendment the petitioner seeks to challenge an order dated 19th July 2007 passed by the Estate Officer who after rejecting the adjournment application moved by the petitioner on the ground of illness of the advocate, has discarded the evidence of the witness by name Mahendra Rampara and the evidence

of the petiitoner is treated as closed. The order further observes that the opponent party no.3 in view of the order dt. 19-7-2007 , stated that it does not want to lead any evidence. The learned counsel for the petitioner categorically states that if the impugned order dated 19th July 2007 is set aside the petitioner would keep the witness present on any date stipulated by the Estate Officer and will keep the witness present for cross examination on that day. The petitioner also proposes to examine one more witness by name Manohar Shetye. The petitioner undertakes to keep the witness present on the date stipulated by he Estate Officer on which date witness Mahendra Rampara would be cross examined. The learned counsel for the petitioner submits that if the impugned order dated 19th July 2007 is quashed and set aside, he seeks permission to withdraw the W.P. No.2908/07 with liberty to raise all the contentions raised in this petition in an appeal to be preferred before the City Civil Court against the order passed by the Estate Officer, if so advised.

3. Perused the order dated 19th July 2007. I feel that discarding evidence of the witness of the petitioner would result in miscarriage of justice. If one more opportunity is granted to the petitioner to make available the witness for cross examination and a

further permission is granted to examine one more witness, the same will advance cause ofjustice. In all fairness the learned counsel for the respondent submits that he has no objection for setting aside the order dated 19th July 2007, in case the petitioner undertakes not to seek any adjournment before the Estate Officer hereinafter. Such an undertaking is already given by the learned counsel for the petitioner that witness will be kept present on 30-08-2007 and no further adjournment will be sought. In view of the concession made available, by the learned counsel for the respondent, the impugned order dated 19th July 2007 is quashed and set aside. The parties undertake to remain present before the Estate Officer on 30-08-2007. The petitioner shall make available witness Mahendra Rampara for cross examination and shall examine one more witness by name Manohar Shetye on the said date. It shall be open for the respondents to lead evidence if it so desires.

4. In this view of the matter, the writ petition is partly allowed. The impugned order dated 19th July 2007 is quashed and set aside. The original prayers made in the writ petition are not pressed and the petition to that extent stands withdrawn with liberty to agitate the points raised in the writ petition in an appeal, if preferred against the order passed by

the Estate Officer.

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